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In the United States Patent and Trademark Office

Identification Page per MPEP 1208 (I) (A)

In re the Application of:

John Falk Kelley)

Serial Number: 10/001,744)

Group: 2172

Docket Number: AUS920010748US1)

Examiner: Cam Y T Truong

Filed on: 10/31/2001)

For: "Context Management Super Tools)

and Filter/Sort Model for Aggregated)

Display Webpages")

REPLY BRIEF

Real Party in Interest per 37 CFR §41.37(c)(1)(i)

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)

None.

Status of Claims Page per MPEP 1208 (I) (B)

Status of Claims per 37 CFR §41.37(c)(1)(iii)

On June 24, 2005, appellant appealed from the final rejections of claims 1 - 12. Independent claims 1 and 7 amended on November 10, 2005, while claims 2 - 6, and 8 - 12 remain in their originally filed states. Claims 1 - 12 are reproduced in the Appendix to this Appeal Brief.

Claims 13 - 15 are non-elected claims responsive to a restriction requirement made by the examiner in the Office Action of 8/10/2004, and thus stand withdrawn from this application. Please note that in the Office Action of March 24, 2005, Examiner has noted that applicant provided the election with traverse, but alleged that no reasoning was provided by applicant for the traverse. This is an inaccurate reflection of the prosecution history, as applicant elected without traverse.

Status of Amendments

The amendment filed on November 10, 2004, has been entered.

Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)

Please refer to the Appeal Brief filed July 12, 2005, for a Summary of the Claimed Subject Matter.

Grounds for Rejection Page per MPEP 1208 (I) (C)

Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)

In the Examiner's Answer, dated 12/18/2006, responsive to Order from the Board to clarify the bases for several rejections, the examiner maintained rejections of claims 1 - 4, 6, 7 - 10, and 12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,452,609 to Katinsky, *et al.*, (hereinafter “Katinsky”) in view of U.S. Patent 5,913,214 to Madnick, *et al.* (hereinafter “Madnick”) in further view of U.S. Patent 5,806,077 to Wecker (hereinafter “Wecker”).

However, the examiner withdrew rejections of claims 1 - 4, 6, 7 - 10, and 12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,452,609 to Katinsky, *et al.*, (hereinafter “Katinsky”) in view of U.S. Patent 5,913,214 to Madnick, *et al.* (hereinafter “Madnick”), the combination *excluding* U.S. Patent 5,806,077 to Wecker (hereinafter “Wecker”).

A duplicate set of rejections for claims 5 and 11 were withdrawn, maintaining one set of rejections of claims 5 and 11 were under 35 U.S.C. §103(a) as being unpatentable over Katinsky in view of Madnick in view of Wecker in further view of U.S. Patent 6,452,609 to Nikolovska (hereinafter “Nikolovska”).

Arguments Page per MPEP 1208 (I) (D)

Arguments per 37 CFR §41.37(c)(1)(vii)

Please refer to Appellant's original arguments in the Appeal Brief filed May 11, 2006, all of which are maintained by Appellant. The following replies to specific arguments presented in the Examiner's Answer, and is intended to supplement Appellants' Appeal Brief arguments.

Examiner's Response 10.1. In the Examiner's Answer, it was argued that the claims do not recite "historical stock trading data, such as graphing the historical trends of stock data", and that the claims only recite "retrieving data or information". Appellants reply that their argument was less about the definition of "information", but more about handling of *homogeneous* data sources as opposed to handling of *heterogenous* data sources.

Further, Appellants' claim terms "data and information" relate to such information as historical stock trends. The "such as" portion of Appellants' argument is offered to illustrate the difference between the term as the Appellants have used it as opposed to streaming media sources. Appellants submit that many in the industry would not consider streaming media to be "data", such as raw stock trading information. Unfortunately, there are not enough precise words in the vernacular space of computing, telecommunications and data communications to make clear distinctions. This is why the claims must be interpreted with their broadest scope, but also consistent with the Appellants' disclosure. Katinsky, being directed towards handling of media objects, fails to disclose retrieving of such data or information.

Still further, the claims do indeed recite processing of the data by execution of the "action scripts", which are unnecessary for Katinsky to play their media objects. The Appellants' argument mentions "graphing" as a type of processing by the action scripts in order to help illustrate to the Board what is meant by "executing an action script". Katinsky also fails to teach these aspects of Appellants' claims.

Appellants have patentably distinguished their claims by reciting "selectable heterogeneous actions", and "... aggregation of results from a plurality of semi-independent heterogeneous information modules, heterogeneous transactional modules, or both, . . .". Historical stock trading data, and graphing such data, were used in the *arguments* simply as illustrations of information which is different (e.g. non-homogeneous, a.k.a. heterogenous) from different from each other. Katinsky only handles homogeneous data (e.g. all are streaming media).

No evidence has been placed in the record regarding any teachings by Katinsky regarding heterogenous actions and aggregation of heterogenous data sources as Appellants have claimed. Appellants agree that the claims are to be interpreted in light of the specification, but the specification is not to be read into the claims. Appellants also point out that examination of all the terms in the claims must be made. Therefore, the cited references must show *heterogenous* actions on *heterogenous* transactional modules, or the rationale for the rejections is improper.

Examiner's Response 10.2. In the Examiner's Answer, the examiner agreed with Appellants that Katinsky teaches "pageless" design, but it was argued that Katinsky discloses an "a displayed media access web page 10 that contains an object". In a previous Examiner's Answer, this argument was supported by stating that Katinsky teaches an alternate embodiment of a web page with a selectable link. Is this a new rationale that amounts to a new grounds of rejection, or possibly a shift in reasoning within the same ground of rejection?

The issue, however, is not whether or not web pages are new or old, because certainly web pages themselves are not new, but whether or not there is *motive* to modify Katinsky in the manner proposed. The fact that Katinsky teaches of a "pageless" design is relevant because Katinsky actually touts the differences or advantages of "pageless" over traditional, paged web site designs. The term "pageless" is used eleven times in Katinsky's disclosure, which demonstrates the importance to Katinsky of this aspect of their invention.

This fact about Katinsky is relevant to motivation to combine or modify under §103 because there can be no motivation for any modification of Katinsky in any manner which would render Katinsky undesirable for its intended function as would have been seen by one of ordinary skill in the art at the time the invention was made, or which would change a principle of operation.

Appellants submit, then, that the question at hand is whether or not Katinsky's "pageless" disclosure teaches away from modification to operate in a "paged" mode. The examiner has not responded to Appellants' argument regarding *motivation*, and thus it should be held that a *prima facie* case of obviousness has not been established for failure to show motivation to combine and modify as proposed.

Examiner's Response 10.3 In the Examiner's Answer, it was stated that Appellants' argument relied upon "a simultaneous display of different information items", but that this feature is not recited in Appellants' claims. The examiner's point centered on the term

"simultaneous".

Appellants were explaining or expanding upon the definition of "display of aggregated data" in comparison to sequentially displayed data, but Appellants' claims are sufficiently worded to include this meaning without needing explicit recitation of "simultaneous display of information items". The position that "displaying aggregated data" could mean *sequentially displaying aggregated data* is paradoxical, because *sequential* means separated in time, while *aggregated* means brought together (e.g. brought together in time being the synonym of simultaneous, and being antonymous with sequential):

Examiner's Response 10.4. In the Examiner's Answer, the discussion regarding whether or not Katinsky teaches paged designs was revisited, with particular respect to whether or not a *prima facie* case of obviousness was properly formed.

The examiner further discusses the technical features of the multiple non-primary references, but does not address the point regarding motivation to modify Katinsky in a manner which controverts the negative teachings of Katinsky.

Per the preceding discussion regarding the response 10.2, Appellants contend that Katinsky effectively discourages traditional paged designs, and such a modification to include paged features from Madnick or Wecker would not have been obvious to do as there would have been no motivation to change Katinsky from their preferred pageless embodiment (e.g. no motivation can exist where the primary reference teaches away from the changes or where the modifications would alter a principle of operation of the primary reference).

Examiner's Response 10.5. In this newly added response to arguments (as compared to the previous Examiner's Answer), the examiner has argued that it would have been obvious to "recognize the advantages of Madnick's teachings", and that the final results would be to allow the "user [to] view the results in a sequence of times clearly" (line 9, pg. 16 of the Examiner's Answer).

Whether or not recognition of advantages would have occurred by those skilled in the art is irrelevant if such changes would have rendered the primary reference, Katinsky, unsatisfactory for its intended purpose (MPEP §2143.01), or if a principle of operation of the primary reference would be modified (MPEP §2143.01).

More importantly, the examiner has stated in this response that the user would be allowed to view the results "in a sequence", which is not the same as an aggregated display, as

established in the foregoing paragraphs. As such, where is the motivation to aggregate the results rather than show them in a sequence? Such motivation does not appear in the references, and thus the rejections should be reversed.

Examiner's Response 10.6. In this newly added response to arguments (as compared to the previous Examiner's Answer), the examiner has argued it would have been obvious to combine Nikolovska's teachings with those of the other three references "in order to eliminate irrelevant information and display results in a visually clear and simple way" (lines 4 - 5, pg. 17 of the Examiner's Answer).

However, there is no citation where this reasoning is found. Does Nikolovska suggest that its database operations should be applied to a sequenced media player such as Katinsky's system? Does Katinsky suggest that its media objects need to be "filtered and sorted" in order to be more simple and visually clear, and that those media objects should be stored in records of a database?

Absent such support, a *prima facie* case of obviousness is not properly established, and therefore the rejections should be reversed.

Summary

For the foregoing reasons, and for the reasons previously discussed in Appellant's Appeal Brief, it is submitted that the rejections of Claims 1 - 12 were erroneous, and allowance of these claims is respectfully requested.

Respectfully,

A handwritten signature in black ink that reads "Robert Frantz". The signature is written in a cursive, flowing style with a large, stylized "R" and "F".

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Claims Appendix

per 37 CFR §41.37(c)(1)(viii)

Clean Form of Amended Claims

Please refer to the Appeal Brief filed July 12, 2005, for a copy of the claims in clean form.

Evidence Appendix
per 37 CFR §41.37(c)(1)(ix)

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

Related Proceedings Appendix***per 37 CFR §41.37(c)(1)(x)***

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).